

HAWAII ADMINISTRATIVE RULES  
TITLE 19

DEPARTMENT OF TRANSPORTATION  
CHAPTER 122

EXAMINATION OF APPLICANTS FOR ISSUANCE AND RENEWAL OF MOTOR  
VEHICLE DRIVER'S LICENSES AND INSTRUCTION PERMITS

SUBCHAPTER 4

DRIVER EDUCATION INSTRUCTOR APPLICANTS; CRIMINAL HISTORY RECORD;  
EMPLOYMENT HISTORY; BACKGROUND CHECK

§19-122-200 **Definitions**. As used in this subchapter:

"Affected individual" means the person to which a Federal Bureau of Investigation (FBI) identification record pertains.

"Applicant" means a person seeking certification as a certified driver education instructor according to the requirements of subchapter 3.

"Arrest records" means criminal history information obtained from sources other than the FBI pertaining to arrests for alleged criminal behavior.

"Background information" means information pertaining to a person's behavioral history that may indicate a significant risk to the health, safety, or well-being of children.

"Children" means students enrolled in driver education or behind-the-wheel driving courses certified by the department in subchapter 5.

"Clean criminal history record" means that an individual's criminal history record check shows no indication of criminal behavior.

"Criminal conviction record" means criminal history information obtained from sources other than the FBI pertaining to an individual's conviction of a crime.

"Criminal history" means information about a person's actual or alleged criminal offense(s).

"Criminal history record" means evidence of a person's actual or alleged criminal offense(s) (arrests, convictions and supporting information) on file with law enforcement agencies, courts, the Hawaii criminal justice data center or in the national criminal history record files.

"Criminal history record check" means an examination or search for evidence of an individual's criminal history by means of:

- (1) A search for the individual's fingerprints in the national criminal history record files and, if found, an analysis and any other information available pertaining thereto; and
- (2) A criminal history record check conducted through the files maintained by the Hawaii criminal justice data center.

"Department" means the department of transportation.

"Driver education instructor certificate" means the card issued to an instructor who has completed all requirements and been certified by the department to conduct driver education or behind-the-wheel driving courses or both as defined in subchapter 5.

"Employment history" means information relating to a person's past work experiences.

"FBI identification record" means a listing of certain information taken from fingerprint cards submitted to and retained by the FBI in connection with arrests and, in some instances, includes information taken from fingerprint cards submitted in connection with Federal employment, naturalization, or military service. The FBI identification record is often referred to as a "rap sheet". The identification record includes the name of the agency or institution which submitted the fingerprint card to the FBI. If the fingerprint card concerns a criminal offense, the identification record includes the date arrested or received, the arrest charge, and the disposition of the arrest if known to the FBI. All arrest data included in an identification record are obtained from fingerprint cards, disposition reports and other reports submitted by agencies having criminal justice responsibilities. Therefore, the FBI Identification Division is not the source of the arrest data reflected on an identification record.

"FBI rules to correct the FBI identification record" means rules and regulations published in the Federal Register by the FBI pertaining to the procedure for the affected individual to obtain, review, and request change, correction or updating of any alleged deficiency to the FBI identification record.

"Fingerprinting" means the recording of a person's fingerprints using conventionally accepted equipment and procedures to satisfy the quality, readability, and specifications of the FBI's criminal history record checking requirements. [Eff and comp \_\_\_\_\_] (Auth: HRS §286-108; SLH 1999, Act 175) (Imp: HRS §286-108; SLH 1999, Act 175)

§19-122-201 **General rule.** (a) Applicants who work in close proximity to children shall be of reputable and responsible character.

(b) The department may refuse to issue a driver education instructor certificate to, may terminate the driver education instructor certificate of, or may revoke the driver education instructor certificate of any applicant who has a criminal history record, employment history, or background involving violence, alcohol or drug abuse, sex offense, offense involving children or any other circumstance which indicates that the applicant may pose a risk to the health, safety, or well-being of children. The refusal, termination, or revocation action may be based on:

- (1) Conviction of a crime which indicates that the person poses a risk to the health, safety or well-being of children (the type of criminal offense, when it occurred, and evidence of rehabilitation may be considered in determining whether the criminal history record indicates a risk to children);
- (2) Other information or evidence which reflect upon the character and fitness of the person which indicates that the person poses a risk to children;
- (3) Failure to accurately and fully complete and submit certification application documents; or
- (4) Failure to declare, concealing, or falsifying criminal history, employment history, or background information to the department. [Eff and comp \_\_\_\_\_] (Auth: HRS §286-108; SLH 1999, Act 175) (Imp: HRS §286-108; SLH 1999, Act 175)

§19-122-202 **Applicant duty to provide information.** (a) Except as otherwise specified or exempted from criminal history record check requirements, any person who teaches driver's education or seeks certification as a driver education instructor with the department in a position which places that person in close proximity to children is required to provide to the department:

- (1) An accurately and fully completed certification application with all requested information and documents including employment references; and
- (2) A written consent for the department to obtain information from current and past employers and references.

(b) Applicants shall cooperate fully and make every reasonable effort to provide information and comply with fingerprinting and other related requirements when so notified and instructed by the department or its representative agents. The department may refuse to certify, or may terminate the driver education instructor certificate or both of any person who willfully fails to cooperate or fails to provide the requested information. [Eff and comp ] (Auth: HRS §286-108; SLH 1999, Act 175) (Imp: HRS §286-108; SLH 1999, Act 175)

**§19-122-203 Fingerprinting requirement.** The department shall require all applicants to undergo fingerprinting to conduct criminal history record checks as may be accommodated by the Hawaii criminal justice data center. Applicants must pay all charges for fingerprinting and for the criminal history record. Applicants shall cooperate fully and make every reasonable effort to comply with fingerprinting and other requirements when so notified and instructed by the department or its representative agents. The department may refuse to certify and may terminate the driver education instructor certificate of any person who willfully fails to comply or cooperate fully with fingerprinting requirements. [Eff and comp ] (Auth: HRS §286-108; SLH 1999, Act 175) (Imp: HRS §286-108; SLH 1999, Act 175)

**§19-122-204 Use of criminal history records results.** (a) Information obtained from criminal history record checks shall be used exclusively by the department for the purpose of determining whether or not a person is suitable for working in close proximity to children. Use and release of such information obtained from the FBI shall be subject to federal laws and regulations.

(b) The department may disclose information that an affected individual's criminal history record check shows a "clean criminal history record". Federal law (28 U.S.C. §534) otherwise prohibits the disclosure of criminal history information obtained from the FBI. An FBI identification record and information contained therein, however, may be disclosed to the affected individual when explaining decisions or contemplated decisions resulting in refusal to certify an applicant for a driver education instructor certificate or termination of a driver education instructor certificate. Information from an FBI identification record may also be disclosed to a legal representative of the applicant with the consent of the affected individual and may also be displayed, with the consent of the affected individual, at an administrative hearing to resolve issues concerning the record's content and use. If desired, the affected individual may also request the correction of FBI criminal history information by following FBI rules to correct the FBI identification record.

(c) Criminal history information obtained from sources other than the FBI may be categorized into criminal convictions and arrest records.

Criminal convictions are considered public records and may be disclosed to the general public. Arrest records are private and shall not be released by the department except in the process of verifying the disposition of the arrests, or as otherwise required by law. Information regarding a person's arrest records for offenses that may pose a risk to the health, safety or well-being of children may be used as

the basis to delay driver education instructor certificate decisions or for the suspension of a driver education instructor certificate pending further inquiry and investigation. Arrest records shall not be used as the sole basis to refuse a driver education instructor certificate. [Eff and comp  
] (Auth: HRS §286-108; SLH 1999, Act 175) (Imp: HRS §286-108; SLH 1999, Act 175)

§19-122-205 **Current department of education certified driver education instructors .**  
Individuals at the time of the effective date of the original version of the instant rule section, who hold driver education certificates issued by the department of education within the previous five years, are subject to the requirements of this subchapter, if required in subchapter 3, upon the expiration of their current certificate and upon applying for a new certificate as required in subchapter 3. [Eff and comp  
] (Auth: HRS §286-108; SLH 1999, Act 175) (Imp: HRS §286-108; SLH  
1999, Act 175)